such a contract cannot be said to rest in parol; that the wills, in equity, are not ambulatory, and may not be revoked by either party so long as the other party continues to perform the contract; and that where either party to such a contract commits a breach of same by subsequently executing another will devising his property contrary to the terms of the contract, the other party is entitled to specific performance. *Brown* v. *Webster,* 90 Neb. 591, 134 N. W. 185, 37 L. R. A. N. S. 1196.

WILLS—GIFTS PARTLY VOID.—Testator devised the residue of his estate to the town to use the income forever to care for testator's burial place, and the balance to support public schools. It was claimed that the whole gift was void because an uncertain part was to be devoted to a private purpose (care of a burial place) as to which a perpetual trust would be void. But the court found that $3 a year would care for the burial place, reviewed the conflicting decisions as to the validity of trusts to maintain tombs in perpetuity, and succeeded in avoiding a decision on the point by holding the charitable trust to support the public schools was separable from the rest, or if not the whole might be devoted to the support of the public schools, charged with a "moral obligation" to maintain testator's tomb. *Smart* v. *Town of Durham,* (N. H. 1913), 86 Atl. 821.

In another recent case $500 out of an estate of $30,000 was given to St. Mary's Catholic Parish of Sterling in trust to keep testator's burial lot forever in repair and use the rest of the income in support of the parish school, and it was held that the whole gift was valid in view of the trifling amount of the bequest compared with the rest of the estate. *Burke* v. *Burke* (Ill. 1913), 102 N. E. 293. In this case contestants relied on the prior decisions of the court that trusts for perpetual care of a burial lot are void: *Mason* v. *Bloomington Lib. Assn.,* 237 Ill. 442, 85 N. E. 1044, 15 Ann. Cas. 603; and that the valid provisions of the will must be rejected with the invalid where the will manifests a connected plan destroyed by the invalidity of a part, where the good cannot be separated from the bad, or where enforcement of a part only would result in injustice. *Barrett* v. *Barrett,* 255 Ill. 332, 99 N. E. 625. The general rule is that the invalidity of a part of a gift or trust does not destroy the rest if the good can be separated from the bad, unless the result thereby produced is a disposition that the testator probably would not have made if he had known that part of his plan could not have effect. *Landram* v. *Jordan,* 203 U. S. 56, 27 Sup. Ct. 17; *Niles* v. *Mason,* 126 Mich. 482, 85 N. W. 1100; *Johnson* v. *Johnson* (Ky. 1904), 79 W. 293.

WILLS—TESTAMENTARY CAPACITY — SUFFICIENCY OF EVIDENCE.—The testator suffered at times from attacks of insanity, but all the witnesses present when the will was made, including the subscribing witnesses, a physician, and a nurse, testified that at the time of making the will the testator was of sound and disposing mind. The only evidence tending to prove mental incapacity was that the frequency of the attacks of dementia was increasing, and that before and after the will was executed the testator made declarations of intention contrary to that expressed in the will. *Held,* that at the time of

execution of the will the testator was of unsound mind. *In re Jones' Estate* (Cal. 1913), 135 Pac. 288.

This case, to say the least, goes to the extreme, especially if we remember that California is one of the states in which it is held that in questions of testamentary capacity the burden of proof is upon the party alleging incapacity. *In re Scott's Estate,* 128 Cal. 57, 60 Pac. 527. The fact that the testator, prior to the execution of the will, made declarations of an intent different from that expressed in the will does not require that the will be set aside. *Hays* v. *Moulton,* 194 Mass. 157, 80 N. E. 215. Such declarations, however, as well as declarations made subsequent to the will, are admissible to show testator's mental condition, provided that the time of making them was so near to the time of the execution of the will that the declarations tend to show the mental condition at that time. *Taylor* v. *Pegram,* 151 Ill. 107. In the principal case evidence of a declaration made twenty-six days after the execution of the will was held admissible. Perhaps the court would not have been justified in setting aside the verdict as contrary to the weight of evidence, yet the declaration of the testator, made twenty-six days after the will, of an intention contrary to that expressed in the will, and other evidence of that nature, should be given little or no weight. "A will cannot be rejected on account of insane delusions of the testator which are not operative in the testamentary act, and which do not relate to the persons or objects affected by it; and a verdict setting aside a will on the ground of insanity of the testator is not sustained by the evidence where the proof shows that he had business capacity and made the will intelligently without actions indicating a deranged mind as to its subject matter or execution, notwithstanding proof of his unfounded fancies and delusions as to other matters." *In re Redfield,* 116 Cal. 637, 48 Pac. 794. See also *In re Wilson,* 117 Cal. 264, 49 Pac. 172; *Thompson* v. *Ish,* 99 Mo. 160; *Blough* v. *Parry,* 144 Ind. 463; *Denson* v. *Beazley,* 34 Tex. 191; *Bice* v. *Hall,* 120 Ill. 597.